Supreme Court, U. S.
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No. 79-2024

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

URBATEC, a California corporation,

Petitioner,

vs.

YUMA COUNTY, an Arizona county,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Respondent Yuma County, an Arizona county, opposes the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above-captioned matter, Urbatec v. Yuma County,

614 F.2d 1216 (1980), and urges the Court to deny the same.

ADDITIONAL STATUTE INVOLVED

Petitioner failed to include the following statute in its list of statutes involved in consideration of this case:

Ariz. Rev. Stat. §32-1153.

Proof of License Prerequisite to Civil Action

No contractor shall act as agent or commence or maintain any action in any court of a state for collection of compensation for the performance of any act for which a license is required by this chapter without pledging and proving that the contracting parties whose contract gives rise to the claim was a duly licensed contractor when the contract sued upon was entered into and when the alleged cause of action arose. Ariz. Rev. Stat., Vol. 10 at 544.

QUESTION PRESENTED FOR REVIEW

Does the Opinion of the court below properly hold that Arizona law controls the scope of available remedy where the contract sought to be enforced would have been between an Arizona county and a California contractor to build low-income housing that was to be subsidized by the federal government?

STATEMENT OF THE CASE

Respondent deems the following material necessary to correct inaccuracies or omissions in the petitioner's statement of the case.

The Yuma County Housing Authority (hereinafter "the Authority") is an agency of Yuma County to which was delegated the authority to negotiate but not the authority to contractually bind the county. (Transcript at 149).

One of the proposals for development which was submitted in response to the Authority's advertisement for Turnkey project proposals came from petitioner Urbatec. Urbatec was not licensed as a contractor in Arizona, had never applied for a license in Arizona, and was not qualified to do business in Arizona as a foreign corporation. (Transcript at 52, 109-10)

On November 8, 1972, the Authority withdrew its application to the Department of Housing and Urban Development (hereinafter HUD) for Turnkey public housing (Exhibit 33) in which action the Yuma County Board of Supervisors concurred. (Exhibit 38). The housing project was never constructed, but Urbatec brought this action for breach of contract against Yuma County. Jurisdiction in the district court was based on diversity.

The Court of Appeals for the Ninth Circuit reversed a judgment entered by the district court in favor of Urbatec because it found that pursuant to the applicable Arizona statutes, Urbatec was precluded from maintaining its action without having secured an Arizona contractor's license. 614 F.2d at 1219.

ARGUMENT

Since the United States Housing Act was adopted in 1937, it has been the express policy of the United States to vest "in the local public housing agencies the maximum amount of responsibility in the administration of the low-rent housing program . . . ." (Section 1 of the United States Housing Act of 1937, 50 Stat 888, as amended by §501 of the Housing Act of 1959, 73 Stat 679, 42 U.S.C. §1401, now U.S.C. §1437.) There is, thus, an express statement of the congressional intent not

to preempt the right of states to legislate in the area of public housing. The state is, thus, free to exercise dominion over those areas that do not interfere with the purposes of the federal legislation as expressed in the congressional enactment and lawfully-adopted regulations. See, Florida Lime and Avocado Growers v. Paul, 373 U.S. 132 (1963)

The issue in this case does not involve the interests of low-income families to secure adequate housing, it involves the right of the State of Arizona to regulate the qualification of contractors seeking to do business within the state. Here, the proposed contract was to be between Yuma County and Urbatec. In the cases relied on by petitioner, that was not the case.

In Miller v. Arkansas, 353 U.S. 187 (1956), the facts involved much more than

a state licensing statute that obstructed a federal interest as as alleged by petitioner. There the contract in question was to be between the United States and a contractor for construction of facilities at an Air Force base. Here, though, the United States would not have been a party to the contract.

The interest of the State of Arizona in requiring contractors to be licensed to do business within the state does not conflict with any federal interest expressed in either the Public Housing Act or the HUD regulations adopted to carry it into effect.

While the federal regulatory scheme is specific and detailed, it does not evidence any intent to prevent the state from controlling the legal relationship between its political subdivisions and potential contracting builders of publicly-financed housing. Absent federal

regulations of such relationships there is, again, no preemption. Pennsylvania v. Nelson, 350 U.S. 497 (1956).

The Ninth Circuit correctly noted that the Arizona licensing statutes "are designed to protect members of the general public without regard to the impact upon individual contractors." 614 F.2d at 1218. As further noted by the Ninth Circuit at Footnote 4, 614 F.2d at 1219:

> Urbatec is not a subcontractor of the federal government, but a contractor of the state of Arizona. Applying the state licensing statute in this case could not frustrate any federal interest and would advance the state's proprietary interest in choosing a known contractor, as well as safeguard the public welfare. The limited federal interest involved would be similarly advanced.

Respondent respectfully submits that petitioner has advanced no compelling reason for the Supreme Court to exercise

its jurisdiction over this case and urges the Court to deny the petition for writ of certiorari.

Respectfully submitted this 23rd day of July, 1980.

O'CONNOR, CAVANAGH, ANDERSON, WESTOVER, KILLINGSWORTH & BESHEARS

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AFFIDAVIT OF SERVICE

GEORGE H. MITCHELL, being first duly sworn, deposes and says:

That he has made service of the foregoing brief by causing to be mailed the original and twenty-nine copies to:

Clerk
Supreme Court of the United States
Washington, D.C. 20543

and has caused to be mailed three copies of said brief to each of the following:

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Attorneys for Petitioner

DATED at Phoenix, Arizona, this 23rd day of July, 1980.

GEORGE H. MITCHELL

SUBSCRIBED AND SWORN to before me this 23rd day of July, 1980.

Notary Public

My commission expires:

August 9, 1981